vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.725 OF 2005

Sundarlal R. Aswale ... Petitioner

V/s.

Smt.Shantabai Dattoba
Sutar (Manmode) & Anr. ... Respondents

Mr.S.R. Page for Petitioner
Mr.M.V. Limaye for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 5, 2005**

P.C.:

. The Petition has been filed against the appellate Court's order decreeing the suit on the ground that there is violation of section 12 (3)(b) of the Bombay Rent Act. According to the appellate Court, the defendant i.e., the Petitioner herein, had not deposited any amount of rent during the pendency of the appeal in the appellate Court. The appellate Court decreed the suit since it was of the view that the defendant was not entitled to protection available under section 12(3)(b) of the Bombay Rent Act. Admittedly, because of the amendment to the Bombay Rent Act in 1987, section 12(3)(b) is no longer on the Statute Book and section 12(3) has been enacted. The suit is of the year 1999.

Therefore, the provisions of law relied on by the appellate Court are not applicable to the present case. Moreover, in my view, it was necessary for the appellate Court to calculate exactly what was the amount deposited by the defendant, the petitioner herein, and whether such amount would cover the period during which the appeal was pending.

2. In view of this, the petition is allowed and the matter is remanded to the appellate Court to decide it afresh in accordance with the judgment in the case of *Bhaskar Bhagwant Shinde v/s. Vasudha Madhukar Kadam,* **2005(3) Mh.L.J. 428.** The appellate Court while deciding the appeal will consider the provisions of section 12(3) and not section 12(3)(b) of the Bombay Rent Act.

2. The parties shall appear before the appellate Court on 3.10.2005. The appellate Court shall decide the appeal within three months from the receipt of the copy of the order.